

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3229 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KARSHANBHAI C KHAMBHALIA

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER

Date of decision: 25/11/96

ORAL JUDGEMENT

1. This petition is filed by the petitioner for an appropriate writ direction or order directing the respondent authorities to implement certain decisions of the Government and of a Cabinet. Para 16 which is prayer clause, reads as under:

"16. The petitioner, therefore, prays that this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus and/or any other appropriate writ, order or direction to:

- (i) direct the State of Gujarat to implement forthwith the Cabinet decision taken on 10.1.1985 both on the question of quantum of reservation and on the question of removal of prescription of certain percentage of marks for the purpose of engineering, medical and other colleges;
- (ii) to direct the Government not to refer the question of reservation upto 28% too any agency for review including any commission whether appointed at the State level or at the national level.
- (iii) to direct the State Government to declare that the 10% reservation shall not be discontinued even at the end of 10 years' period referred to in para 5.32 of the Baxi Commission Report.
- (iv) Pending admission hearing and final disposal of this petition to issue an interim injunction restraining the State of Gujarat from in any manner reducing or diluting the existing reservation provisions for other Backward Classes either with immediate effect or with effect from the completion of 10 years of the implementation of the Baxi Commission Report;
- (v) Pending admission hearing and final disposal of this petition to issue an interim direction to the State of Gujarat to start implementing the Cabinet decision dated 10.1.1985 (of implementation of 28% reservation for O.B.Cs.) and removal of prescription of marks;
- (vi) pass such other and further orders as deemed fit and necessary by this Hon'ble court in the interest of justice."

Reading the above prayers, it is clear that clauses (i), (ii) and (iii) refers to the prayer of the petitioner regarding implementation of the Cabinet decision and directions to the Government to implement the policy decision. In clause (iv) and (v), prayer is made for interim relief. Rule was issued by this court on June 4, 1985 and ad.interim relief was also granted. To day the matter is called out for final hearing.

In my opinion, all the questions pertain to policy decision. Appropriate remedy is not by way of invoking extra ordinary jurisdiction of this court under Art.226 of the Constitution of India. It is, however, open to the petitioner to approach the appropriate authority including the Government for the purpose of the implementation of the policy decision taken by the Government. I may clarify that I am not expressing any opinion on merits in view of the fact that in my opinion all questions relate to policy and if any decision adversely affect the petitioner then it is open to him to take appropriate proceedings including the filing of the petition and disposal of this petition will not come in the ay of the petitioner. Rule is accordingly discharged. Ad.interim relief vacated. No order as to costs.

Dt. 25.11.1996. (C.K.THAKKER J)